

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

DWAYNE ALLEN¹

PLAINTIFF

v.

CIVIL ACTION NO. 2:12-CV-00100-GHD-JMV

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

FINAL JUDGMENT

Upon consideration of the file and records in this case, the Court finds that the Report and Recommendations [10] of the United States Magistrate Judge dated September 19, 2012 was on that date duly served upon Plaintiff's counsel and counsel of record for Defendant; that more than fourteen (14) days have elapsed since service of said Report and Recommendations; and that no objection thereto has been filed or served by any party. The Court finds that the Report and Recommendations should be approved and adopted.

As the Magistrate Judge explains in detail in her Report and Recommendations, the Plaintiff has failed to exhaust his administrative remedies prior to filing his complaint. Specifically, the Administrative Law Judge issued a decision finding that the Plaintiff was not entitled to disability benefits and was not disabled. The Plaintiff then filed a request for review of the Administrative Law Judge's decision with the Appeals Council on March 20, 2012. While that request was still pending before the Appeals Council, the Plaintiff filed his complaint in this Court. Thus, the Plaintiff filed his complaint before he received a "final decision" of the Commissioner of Social Security and, in so doing, failed to exhaust his administrative remedies. Accordingly, this Court is without jurisdiction to hear the case.

¹ The Court notes that although the Plaintiff's name is spelled "Dwayne Allen" in the complaint and style of the case, the correct spelling of the Plaintiff's name is "Dewayne Allen."

It is, THEREFORE, ORDERED that

- (1) the Report and Recommendations [10] of the United States Magistrate Judge dated September 19, 2012 is approved and adopted as the opinion of the Court;
- (2) the proposed findings of fact and conclusions of law set out in the Report and Recommendations [10] are adopted as the findings of fact and conclusions of the law of the Court;
- (3) the Commissioner's motion to dismiss [8] is GRANTED; and
- (4) the case is DISMISSED WITHOUT PREJUDICE.

It is SO ORDERED, this, the 17th day of October, 2012.



SENIOR JUDGE